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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1948

No. 421

E. G. BRADHAM AND RUBY BRADHAM,
Petitioners,

vs.

THE UNITED STATES OF AMERICA

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT.

Your petitioners above named respectfully pray that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Tenth Circuit entered on the 19th day of July, 1948, affirming a judgment heretofore entered in favor of the United States of America in the United States Court of the Eastern District of Oklahoma, in an action to quiet title to lands situated in McCurtain County, Oklahoma.

Opinions Below

The findings of fact and conclusions of the trial court are embodied in the transcript (R. 25-45). The opinion of the Court of Appeals for the Tenth Circuit is also shown in the transcript and not officially recorded (R. 203-209).

Jurisdiction

The judgment of the Court of Appeals was entered July 19th, 1948 and petitioners did not file a petition for rehearing, but within the 90 days period for review by certiorari petitioners obtained an extension of time until November 16, 1948 within which to file petition for certiorari.

The jurisdiction of this Court is invoked under Section 240(a) of the Judicial Code as amended by the Act of February 13, 1925.

Statement of the Case

This is an action between the United States of America for and on behalf of the Choctaw-Chickasaw Tribes or Nations of Indians, to quiet title and for possession of certain lands accreted to Section 32, Township 10 South, Range 27 East in McCurtain County, Oklahoma.

The land involved constituted a part of the unallotted lands belonging to the Choctaw-Chickasaw Nations or Tribes of Indians and the Government of the United States had authority to sell and issue deeds of conveyances to any of the unallotted lands owned by the Nations of Indians.

Prior to December 23, 1912, the office of the Commissioner of the Five Civilized Tribes published a notice that he would offer for sale at public auction at Idabel, Oklahoma, on December 23rd, 1912, among other tracts of land, Tract No. 1107, described as lots 1 and 2 and the east 14.55 acres and east 5 acres of the northwest 10 acres and the southwest 10 acres of lot 3, and lots 4, 6 and 7, and the southwest quarter of the northwest quarter of Section 32, Township 10 South, Range 27 East containing 134.45 acres at a minimum price of $739.48 (Rec. 157-158).

This notice stated that all of the unallotted lands in McCurtain County would be sold and set out the terms and conditions of sale. It provided that twenty-five percent of

the amount bid must be paid at the time of sale and the balance with six percent interest from date in three other installment payments. All payments were to be made to the Commissioner of the Five Civilized Tribes. It provided that all bids would be accepted subject to the approval of the Secretary of the Interior and immediately after such approval a "certificate of purchase" would be issued entitling the purchaser to the immediate possession of the land. It stated that blue print maps of McCurtain County, showing the location of each tract being outlined and numbered to correspond with the tract number in said printed notice, would be furnished to prospective bidders (Deft's Ex. 1, R. 157-158). The notice also said that the map would show the location of the land with reference to towns, railroads and rivers (R. 158). The map shows the lands sold to Young and Shaw bordered on the river (R. 163).

At this sale on December 23rd, 1912, Nicholas A. Shaw and Robert Young purchased Tract No. 1107 and paid $184.90 as one-fourth of the minimum price of $739.48 to the Government. This is shown by the "report of sale" made by J. Geo. Wright, Commissioner of the Five Civilized Tribes, on January 13th, 1913, only twenty-one days after the sale (Deft's Ex. 13, R. 155-157) and (Deft's Ex. 2, R. 160), the card or record on which the Government kept the account of the purchase, amount paid, and dates of payment of principal and interests, etc.

On January 19th, Shaw and Young wrote a letter to Commissioner Wright, stating that some of the land had been washed away and asked for a survey of the lands left (R. 165).

Then on March 8, 1914, the Government surveyor, or someone on behalf of the Government, by the name of Gardenhire made a survey of the Tract No. 1107 and two other tracts of land. He prepared his field notes of the survey and map showing the lines of the survey that he made

at that time and filed them with the other papers at Muskogee, as part of the records of Tract No. 1107 (See Deft's Ex. 7, R. 167-168).

The record in the Government offices does not show that anything else was done relative to this tract of land except that on December 23rd, 1913, Shaw and Young paid the Government $11.09 interest and on December 23rd, 1914, $37.38, and on December 23rd, 1915, $24.43, and on December 23rd, 1916, $24.43, and on January 10th, 1918, the final payment was made for said Tract No. 1107 and a deed No. 13,624 was issued to Shaw and Young (Deft's Ex. 2, R. 160).

The deed issued by the Government to Shaw and Young for Tract No. 1107 (Deft's Ex. 9, R. 171-173) did not describe the land as described in the notice of sale but described it by metes and bounds, courses and distances.

Just when the accretions in the shape of a peninsula referred to herein as "New Island" were formed to Tract No. 1107, we do not know for a certainty but they were formed and attached to Tract No. 1107 sometime between March 8th, 1914, when the survey was made by Gardenhire and the year 1927. (Deft.'s Ex. 13, R. 184-186.)

Shaw and Young occupied this "New Island" or accreted lands, up to the year 1927, when it was severed from the mainland of Oklahoma by a cut-off or avulsion leaving the larger part thereof on the Texas or south side of Red River and only a very small part of the original Tract No. 1107 on the north or Oklahoma side of the river. (R. 103-7.)

After this evulsion or cut-off in 1927, Young and Shaw and their grantees, failed to pay any taxes on the land which they had originally bought from the Government as Tract No. 1107 and the land was sold by McCurtain County, Oklahoma, for the non-payment of the taxes to George Ashford in 1933, who brought an action to quiet title to the land against Shaw and Young and their heirs, and others in the District Court of McCurtain County, and after obtaining a

decree quieting title, George Ashford and his wife, deeded the land to T. E. Derryberry and T. E. Derryberry conveyed the lands to E. G. Bradham and Ruby Bradham who now claim to own this land (Tract No. 1107) and all accretions thereunto belonging, as the successor in title of Shaw and Young.

Questions Presented

I

Whether a failure to mention a river in a government sale of Indian lands operates to exclude accreted lands from the conveyance.

II

Whether the government in this case intended to reserve from the sale a narrow strip of land between the lands sold and Red River.

III

Whether a sale by the government of unallotted Indian lands, bordering on a non-navigable river, carried accreted lands.

IV

Whether an equitable title passed when the government advertised and sold Indian lands at public auction with statement in the notice of sale that the successful bidder was entitled to possession.

V

Whether a purchaser at a tax sale takes a fee simple title with all rights incident thereto.

Reasons for Granting the Writ

1. The decision below conflicts with the rulings of the Oklahoma Supreme Court on an important local question.

2. The decision of the court below conflicts with the decisions of this Court.

3. The Court of Appeals has decided a question of general law contrary to the weight of authority and contrary to the decisions of this Court.

The foregoing propositions are discussed in the following brief.

BRIEF

I

The Decision Below Conflicts With the Rulings of the Oklahoma Supreme Court on an Important Local Question.

The Court of Appeals has here held that a purchaser of a tax title in Oklahoma had no right to maintain an action to establish title to accreted land for the reason, as the court said, there was no privity of estate with these petitioners who hold only under a tax title and the former owner who took title from the government. R. 207. The Oklahoma Supreme Court, as we interpret the cases, has ruled to the contrary. In *Criswell* v. *Wilson*, 198 Okl. 47, 175 P. 2d 87, the Oklahoma court passed upon this identical point. That court said:

> "Accreted lands are included in assessment of lands described in accordance with government survey, though assessment is limited by its terms to the number of acres specified in the survey, and tax deed purchaser acquires the same title, whether they are described or not, as he does to the upland adjoining the land described by the survey."

See also *Smith* v. *Whitney*, 105 Mont. 523, 74 P. 2d 450, cited with approval by the Oklahoma Supreme Court in *Criswell* v. *Wilson, supra*. In another case decided by the Supreme Court styled *Secrest* v. *Williams*, 185 Okl. 449, 94 P. 2d 252, the court said that a tax deed in Oklahoma "conveyed to the purchaser the entire interest and estate in the land." In *Johnson* v. *Williams*, 192 Okl. 163, 134 P. 2d 584, the Oklahoma court held that a valid resale tax deed vested a perfect fee simple title in the purchaser. The rule to which the Oklahoma court adheres is apparently the

rule followed in other states. See *Sanders* v. *Plant*, 83 Ark. 597, 204 SW 2d 323.

Again the court below was in error in saying that the deed did not carry riparian rights because it was unambiguous. The mere fact that it was unambiguous makes no difference. Nor does it matter that the description did not follow meander lines. Nor was it important that the river was not mentioned at all in the patent that was finally issued pursuant to the original sale. In *Braddock* v. *Wilkins*, 182 Okl. 5, 75 P. 2d 1139, the Oklahoma court dealt with a like situation involving this same river. The lands there were described by lots, nothing being said about a river or about meander lines. In *Braddock* v. *Wilkins* title was based on a sheriff's deed. The court said that the water line is the boundary and that line, no matter how it shifts, remains the true boundary and a deed describing the land although no mention was made of the river passed title to the accreted land. We respectfully submit that the opinion below is in conflict with the principles announced in *Braddock* v. *Wilkins, supra.*

Furthermore, the rule applied by the Oklahoma Supreme Court in *Braddock* v. *Wilkins, supra,* cites and follows one of the leading cases by this Court entitled *Jeffers* v. *East Omaha Land Company,* 134 U. S. 178, 33 L. ed. 872. The Court of Appeals observed that "the language of the deed and the evidence extrinsic thereof support the findings of the trial court." We respectfully submit that the court is here in error as the deed contains no words indicating a purpose to reserve accreted lands. Nor do we find any extrinsic evidence in the record that supports the lower court's conclusions. It merely describes the land without employing any language that indicates a purpose to exclude from the operations of the deed accreted lands. The evi-

dence is that the government's maps and presale public notices show that the government was selling all unallotted lands in the county and there was no land shown between these lots and the river. The court's legal conclusions here run counter to the rules consistently applied by the Oklahoma Supreme Court and by this Court.

It would make no difference so far as the law of the case is concerned whether the land conveyed was described by lot numbers, or by metes and bounds, courses and distances, because the original survey of 1897 of Lots 1, 2, 3, 4, 6 and 7 in Section 32, Township 10 South, Range 28 East, on the river side of said lots was a meander line described in the field notes of this survey by metes and bounds, courses and distances. See *Narcross* v. *Griffens*, 65 Wis. 559, 56 American Reports 642. It was there contended, as it was contended here, that because the land was described by metes and bounds, no mention being made of the river along which the line was running, that nothing passed by the deed outside of the boundary lines of the deed. But the Wisconsin case is an authority for the proposition that where land on a non-navigable stream, deed by metes and bounds, includes the bank of the river, although no reference is made to the river, it will be presumed, in the absence of contrary recitals, that the conveyance passes the bed of the river. All the evidence from the government maps on down to the Gardenhire survey points to one fact, that is that the lands sold Young and Shaw bordered on Red River.

Apparently the Court of Appeals laid great stress on the fact that the description of the deed did not mention the river or monument, natural or artificial, or other topography related to the river. (R. 205.) This is in conflict with a number of the important cases decided by the Court of

Appeals of the Tenth Circuit. In *United States* v. *Champlin*, 156 F. (2d) 769, the court said:

> "In Oklahoma *v.* Texas, 258 U. S. 574, 595, 596, 42 S. Ct. 406, 66 L. ed. 771, the patents to Indian allottees of the uplands adjoining the non-navigable river contain no express conclusion or exclusion of the river bed. The Supreme Court held that, under the common law, the patents conveyed the title to the middle of the stream and rejected the contention that the common law rule had been impliedly abrogated in Oklahoma." (See page 774.)"

We think, however, the court below is making its greatest error in overlooking the uncontradicted, positive testimony evidenced by maps and the notice of sale that the land as advertised for sale was shown to border on Red River. This is indisputable and an outstanding fact in the case but apparently overlooked by the Court of Appeals.

II

The Decision of the Court Below Conflicts With the Decisions of This Court

The rule approved by this Court in numerous cases is that unless a contrary intention appears from the language of the grant, or is clearly inferable from the terms of the grant, the grantee of land, bounded by a non-navigable stream, acquires title to the land to the center or thread of the water. This ruling proceeds upon the theory that the grantor was not presumed to have reserved a small strip of land which would be of no value to him.

St. Clair v. *Lovington, et al.*, 23 Wall. 46, 23 L. Ed. 59;
United States v. *Lane*, 260 U. S. 667, 67 L. Ed. 448;
Harden v. *Jordan*, 140 U. S. 371, 35 L. Ed. 428;
U. S. v. *Champlin Refining Company*, 156 F. (2d) 769, 331 U. S. 789, 91 L. Ed. 1818.

The Court of Appeals of the Tenth Circuit in this opinion fails to give effect to the principles applied in the foregoing cases. It is true that the trial court found that there was no intention to convey accreted land, but that finding is not supported by any evidence and the Court of Appeals falls into the same error when it says that the extrinsic evidence supports the finding of the trial court (R. 207). There is no evidence in the record indicating an intention to exclude accreted lands. On the contrary, the record shows that the government published a notice of sale stating that the sale of these unallotted lands would be held on December 23, 1912, and the notices said that the government was selling all unalloted lands owned by these nations in McCurtain County (R. 157). This notice also referred to maps and stated that the maps drawn by the government would show locations of the lands as to railroads, rivers and cities (R. 158). This map was produced in evidence (R. 163). It shows no land between the lots advertised for sale and the river. Moreover, the testimony of the surveyor for the government, and he was the only witness offered by the government who testified as to the descriptions and other matters relative to surveys, showed that the lands as surveyed for purposes of sale ran up to the banks of Red River (R. 54, 55). To this testimony must be added the testimony of two surveyors for the defendants who said that the field notes as to the lands bought by Young and Shaw showed that the description ran over the banks of Red River and that there was no other lands between the lands advertised for sale and the river (R. 72, 73, 74). The Gardenhire survey made after Shaw and Young requested a resurvey of the lands clearly shows that the lands included in the notice of sale ran to Red River (R. 167), so that all of the extrinsic evidence was favorable to the defendants and there was a lack of any evidence on the part of the government to show a contrary intention or a pur-

pose to reserve any narrow strip of land between the lands advertised for sale and the river. This evidence (all uncontradicted) together with the rule of law applied in *St. Clair* v. *Lovington, supra,* and other cases, compel the conclusion that the government did not intend to reserve a strip of land between the lands advertised for sale and Red River.

The Court of Appeals said that the trial court found that "there was a strip of land undeterminable, but recognizable, substantial width, susceptible of ownership lying south and east of the boundary described in the 1918 deed and concluded that New Island accreted to such strip of land" (R. 206). It is conceded that the trial court did make such a finding (R. 38). It is obviously a mere conjecture urged by counsel for the government and adopted by the court. It proceeds on an arbitrary formula, whereby over a period of years (that is, between the date of sale and the date of final payment), there was a gradual deposit of land by accretion which deposits were augmented from year to year and when finally the sale was completed by the payment of the full purchase price, this so called undeterminable strip was in the picture. It will be noted, however, that this is a conclusion built upon a theory with no support in the evidence. In the first place, the land that was deducted certainly left remaining a tract of land (all set out in the notice of sale) that was clearly included in the purchase made by Young and Shaw. The year to year additions by accretion to that land certainly belong not to the Choctaw and Chickasaw Nation but to those who had bid the land in at the sale. This on the principle of law that title passed when the initial sale was made. That land, however described was the property of Young and Shaw, subject only to the final payment of the approved purchase price. See *S. R. A. Inc.* v. *State of Minnesota,* 327 U. S. 558, 90 L. Ed. 851. The Oklahoma Supreme Court has held that a vendee of real estate in possession under executory contract is the real owner for

purposes of taxation and other purposes. *Bowles* v. *Oklahoma City*, 24 Okl. 579, 104 Pac. 902. Here the government's notice of sale stated that the purchaser would be entitled to immediate possession on payment of twenty-five percent of the amount bid (R. 158). Clearly, this base title ripened into a final title when the last payment was made. It thus appears that the theory advanced in the trial court and called a finding is after all nothing more than a surmise. It is a theory adopted by the court by reasoning that in the intervening years from the date of sale and date of final payment, a considerable amount of land was built to the lands that were advertised for sale and that, therefore, these lands so accumulated were not included in the sale. Such reasoning is faulty in that it overlooks the fact that the purchaser as a matter of law takes title as of the date the land was sold at auction. What has accreted to the lands since is clearly the property of the purchaser as if it had made final payment on the day of the auction sale. The Circuit Court of Appeals' opinion, as well as the trial court opinion, traces the title from the date on which the deed was finally delivered. That view overlooks the fact that the title had its inception when the sale was actually cried off to Young and Shaw on December 22, 1912, pursuant to the terms of the notice.

Again the Court of Appeals falls into error when the court says that the purchase price was reduced when Shaw and Young asked for credit for the lands that were washed into Red River. We submit that the purchase price remained the same, the only reduction made was for lost acreage. The price remained the same and the land that remained to be ultimately embodied in the deed was, of course, the land that was not washed into the river and for which no reduction in price was made. It looks as if there could be no conclusion other than that Shaw and Young acquired title to the land that was left after giving credit

(pursuant to the Gardenhire survey) for lost acreage and whatever was built to it in the intervening years was accreted lands passing by tax deed under controlling Oklahoma decisions with like effect as if no tax title intervened in the chain of conveyances.

We respectfully suggest that the Court of Appeals misconceived the issues in the case when it says "the terms of the contract of sale were thus modified and the prior contract was merged in the deed." Cited in support of this statement is the Oklahoma case of *Dawson* v. *Sears,* 188 Okl. 544, 110 Pac. (2d) 910, but upon looking at that case it will be found that the court decided nothing other than that an oral contract is merged with the subsequent written agreement. Here, as above pointed out, there was no new contract, there was no change in the terms of the sale. Young and Shaw were given nothing other than a reduction in acreage, all allowed for land that was thought to be in the tracts that were advertised but which had been washed into the river between the date of the survey in 1897 and the date of sale in 1912. We respectfully submit that *Dawson* v. *Sears, supra,* throws no light whatever upon the law questions involved in this case.

III

The Court of Appeals Has Decided a Question of General Law Contrary to the Weight of Authority and Contrary to the Decisions of This Court.

Obviously the Court of Appeals thought that petitioners had no standing in court because "there is no privity between the former owner of land and one who acquired title thereto through a tax sale" (R. 207). Our point is Shaw and Young acquired an eqiutable title when the land was bid in at the government sale. Absolute title later became vested in Shaw and Young upon final payment of

the approved purchase price. When Shaw and Young lost the land in later years at a delinquent tax sale, they were the absolute owners and the purchaser at the tax sale acquired a perfect fee simple title to the land. *Criswell* v. *Wilson,* 198 Okl. 47, 175 Pac. (2d) 87. The notice of sale, pursuant to which the purchase was made, recited that they would be entitled to go into possession on payment of 25% of the purchase price (R. 155-156). Under our view of the law, this was an irrevocable agreement between the government and Shaw and Young with the result that when Shaw and Young made final payment title passed to them as firmly as if they had paid the entire purchase price when the bid was approved by the Secretary. The initial bid was unquestionably approved as reported by the local representative of the Department (R. 153-155, Deft's Ex. 1-B). See case of *S. R. A. Incorporated* v. *State of Minnesota,* 327 U. S. 558, 90 L. Ed. 851, where this Court said:

> "This court has been of the opinion that contracts for the sale of land transferred to the purchaser the equity in the land."

Pomeroy lays down the rule in this language:

> "The vendee under his executory contract is the owner of the land." (2 Pomeroy Equity Jurisprudence, 5th Edition, page 216, Sec. 368.)

The Supreme Court of Oklahoma applied the foregoing principle in an early case after statehood (styled *Bowles* v. *Oklahoma City,* 24 Okl. 579, 104 Pac. 902). In that case the Oklahoma Supreme Court said in substance that a vendee of real estate in possession under an executory contract of sale is the real owner for the purpose of taxation and that, too, without reference to whether the land was subject to taxation in the hand of the vendor. The *Bowles* case has been cited and followed in other jurisdictions. In a case styled *Cownie* v. *Local Board of Review in and for City of*

Des Moines (Iowa), 16 N. W. (2d) 599, following the rule announced in the Oklahoma case, the court said that the fact that the contract of sale could have been forfeited after the down payment had been made does not change the situation. The court said:

> "We have repeatedly held that in conditional sales contracts, as commonly known, though the naked legal title remains in the seller for purposes of security the possession, use and ownership of the chattel is in the purchaser. He becomes the beneficial owner, the equitable owner, the substantial owner immediately upon execution of the contract."

Also see *Donnelly* v. *Mitchell*, 119 Iowa 432, 93 N. W. 369; *Hansen* v. *Kuhn*, 226 Iowa 794, 285 N. W. 249; *Hayl* v. *Beadel*, 229 Iowa 210, 294 N. W. 335, 130 A. L. R. 994.

The general rule as laid down in Thompson on Real Property is:

> "Equity treats the executory contract as a conversion, whereby an equitable interest in the land is secured to the purchaser for whom the vendor holds the legal title in trust." (Thompson on Real Property, Permanent Edition, Vol. 8, page 522, Section 4579.)

Shaw and Young actually bought all of the land embraced in Tract No. 1107 as the same was described in the notice of sale and in the schedule or return of sale, made immediately following the sale. Commissioner J. George Wright, as the official in charge filed a return of sale and that return showed Shaw and Young had bought the land described in Tract No. 1107 which included Lot 1. However, the patent, later issued by the Government, did not describe Lot 1. The petitioners here, appellants below, were entitled to have the patent reformed by the trial court so as to include Lot 1. As to the balance, no reformation was needed.

Contracts between the United States Government and private individuals are to be construed by the application

of the same principle as if the contracts were executed between individuals. *Reading Steel Casting Co.* v. *United States*, 268 U. S. 186, 69 L. Ed. 907.

In *Lynch* v. *United States*, 292 U. S. 577, 78 L. Ed. 1440 the court said:

> "Rights against the United States arising out of a contract with it are protected by the 5th Amendment."

Again the court said in the same case:

> "When the United States enters into contract relations its rights and duties therein are governed generally by the law applicable to contracts between private individuals."

In *United States* v. *Champlin Refining Co., supra*, this Court said:

> "As regards conveyances the United States assumes the position of a private owner, subject to the general laws of the state. Where it is disposing of tribal land of Indians under guardianship the same rule applies."

We do not deem it necessary to cite authorities to this Court on the point that in the absence of proof to the contrary it will be assumed and presumed that the Government did that which they had agreed to do, that is, issue a certificate of purchase to Shaw and Young for the land described in Tract No. 1107.

It is shown by the report of J. Geo. Wright, Commissioner to the Five Civilized Tribes made on January 13, 1913 (Deft's Ex. 1-B, R. 155-157), that Shaw and Young had purchased said Tract No. 1107 in accordance with the rules and regulations of the Secretary of Interior and that Shaw and Young, as the successful bidders were entitled to a certificate of purchase, and it is also shown by the record that Shaw and Young paid to the Government the required sum on December 23, 1912, the date of the sale (R. 156). This

being true and undisputed, there was a valid executory contract of sale made by the Government to Shaw and Young of the lands described as Tract No. 1107.

Reading Steel Casting Company v. *United States,* 45 S. Ct. 469, 268 U. S. 186.

If the Government entered into a valid executory contract with Shaw and Young to convey to them the land described as Tract No. 1107 on the 23rd day of December, 1912, then said contract vested the equitable title to the lands in Shaw and Young, and they as the owners of the equitable title were in the same position as if the Government had conveyed the land to them by deed on the 23rd day of December, 1912, and retained a vendor's lien for the unpaid purchase price or they had given the Government a mortgage for the unpaid purchase price.

City of New Brunswick v. *United States,* 276 U. S. 547, 48 S. Ct. 371, 72 L. Ed. 693;
Anania, et al. v. *Serenta* (Pa.), 119 Atl. 554;
Orange Cove Water Company v. *Sampson,* 78 Cal. Apps. 334, 248 Pac. 526;
Dunn v. *Yakish,* 10 Okl. 388, 61 Pac. 926;
First National Bank of Decatur v. *United States,* 59 F. (2d) 367.

It is true that the patent or unallotted land deed (Deft's Ex. 9, R. 171-173) was not issued or approved until August 29th, 1918, for this Tract No. 1107 but when the patent was issued it related back to the time when Shaw and Young became the equitable owners of the land. *First National Bank of Decatur* v. *United States,* 59 F. (2d) 367. If Shaw and Young were the riparian owners of the land sold to them on December 23rd, 1912, then they were entitled to all the accretions to the lands which they purchased on that date. If Shaw and Young acquired the accreted lands as a matter of law, we can see no reason why the county did not acquire the same title when the lands were sold to the county at a

tax sale. The purchaser from the county could sue as a successor in interest to the lands here involved. It makes no difference that there was no privity of estate.

Lot 1 was only 5.10 acres as originally platted (R. 163). The Court of Appeals in its opinion said that a bill to reform a deed could not be maintained by a person who was neither a party nor in privity with a party thereto, citing *Taylor* v. *Lawrence,* 176 Okl. 75, 55 Pac. (2d) 634. The only point decided in *Taylor* v. *Lawrence* was that the purchaser at the tax sale could not come in and ask to be substituted as a party and procure a writ of assistance in a case to which he was not a party. He was trying to procure the writ in a foreclosure case that was pending prior to the issuance of the tax deed under which he claimed. The question decided by the court is stated as follows:

> "The only question to be determined in this case is whether the resale tax deed to the county foreclosed any right that Morris, holder of the sheriff's deed, may have had to a writ of assistance."

This case is in no wise in conflict with *Braddock* v. *Wilkins, supra, Criswell* v. *Wilson, supra,* and the other cases cited herein. Even if *Taylor* v. *Lawrence* should be in point, the court still overlooks the fact that Lot 1 was only a very small tract of the land that was sold to Young and Shaw. If we should be precluded from reforming the deed because of lack of privity, that could apply only to the small tract embraced in Lot 1. The Bradhams would have been entitled to recover as to accreted land on all the other acreage irrespective of this point. Our request for reformation was clearly made at the trial (R. 108). The rule applied by this Court in measuring rights as to accreted land is stated in *Johnson* v. *Jones,* 66 U. S. 209, 17 L. Ed. 117, and applying this rule, the greater part of the land here involved was accreted to land other than Lot 1 and

the Bradhams are undoubtedly entitled to recover as to such lands even though it should be held that they could not recover the lands accreted to Lot 1.

Conclusion

WHEREFORE, for each of the reasons above stated, petitioners respectfully submit that this petition for writ of certiorari be granted.

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